SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 299

T. E. STEPHENS,

Petitioner,

vs.

RICHMAN & SAMUELS, INC.,

Respondent.

BRIEF OF PETITIONER.

I.

Official Report of Opinions Below.

The opinion of the District Court of the Southern District of Texas, Brownsville Division, in this case has not been reported but will be found on pages 278-291 of the printed record. The opinion on appeal in the Circuit Court of Appeals for the Fifth Circuit is reported in 118 F. (2d) 1011, and appears on pages 402-404 of the Transcript of the Record, Certified by the Clerk of the Circuit Court below.

II.

Concise Statement of the Grounds of Jurisdiction.

1. The date of the judgment to be reviewed is April 1, 1941, on which rehearing was denied May 10, 1941 and

the judgment of the Circuit Court of Appeals for the Fifth Circuit became final on May 10, 1941.

2. The statutory provisions which are believed to sustain the jurisdiction of this Court are Section 240 (a) of the Judicial Code as amended by the Act of February 12, 1925, C. 229, 43 Stat. 938 (28 U. S. C. A. Sec. 347) and Section 262 of the Judicial Code (28 U. S. C. A. Sec. 377).

3. Sections II (p. 4) and Section IV (p. 8-13) of the foregoing petition are here adopted as further grounds of jurisdiction of this Court.

4. The cases believed to sustain said jurisdiction are as follows:

In Re 620 Church Street Building Corporation, et al., 57 Sup. Ct. 88, 299 U. S. 24, 81 L. Ed. 16;

United States v. *Beatty,* 232 U. S. 463, 467, 34 Sup. Ct. 392, 394, 58 L. Ed. 686;

Neibro Company v. *Bethlehem Shipbuilding Corporation,* 60 Sup. Ct. 153, 308 U. S. 165, 84 L. Ed. 123.

III.

Statement of the Case.

This has already been stated in the preceding petition under I (pp. 1-4) which is hereby adopted and made a part of this brief.

IV.

Specification of Errors.

1. The Circuit Court of Appeals for the Fifth Circuit erred in holding that petitioner's cause of action herein sued on "arose beyond the boundaries of the State of Texas", because the undisputed evidence showed that petitioner's contracts with respondent were made in Texas, and he performed all of his services in Texas, and re-

spondent's agents solicited petitioner's business in Texas; therefore, petitioner's cause of action, as a matter of law, arose in Texas.

2. The Circuit Court of Appeals for the Fifth Circuit erred in holding that Article 2031a, Revised Civil Statutes of Texas (Vernon's edition) applies during the four years after the corporation ceased to do business in Texas "only to causes of action arising within the State of Texas", because said statute also applies to causes of action having arisen out of business conducted by the corporation or had in relation to corporate acts done in Texas, and it applies to petitioner's cause of action because the uncontradicted evidence shows that petitioner's contracts with respondent were made in Texas, and petitioner performed all of his services in Texas, and respondent's agents solicited petitioner's business in Texas.

3. The Circuit Court of Appeals for the Fifth Circuit erred in holding that Article 2031a, Revised Civil Statutes of Texas (Vernon's edition) applies during the four years after the corporation ceased to do busines in Texas "only to causes of action arising within the State of Texas", because the provisions in said statute:

> "A power of attorney designating some individual who is a resident citizen of this State as its service agent on whom process may be served in all suits, proceedings, and causes of action pending or hereafter filed in this State in which said corporation is a party or is to be made a party, which power of attorney shall be in effect so long as said foreign corporation is authorized to do business in Texas and for a period of four years from and after the date any such foreign corporation shall have surrendered its charter or has ceased to do business in Texas."

is such language as compels the Court to construe the statute to include causes of action arising outside of the

State of Texas for which the appointment was given or made.

4. The Circuit Court of Appeals for the Fifth Circuit erred in holding that Article 2031a, Revised Civil Statutes of Texas (Vernon's edition) applies during the four years after the corporation ceased to do business in Texas "only to causes of action arising within the State of Texas", because the provisions in the power of attorney executed by respondent to Travis B. Moursund appointing him as a State agent for service of process,

> "does hereby make, constitute, and appoint Travis B. Moursund * * * its true and lawful attorney in fact for and in the State of Texas, upon whom all process of law against said corporation and any action or legal proceeding may be served, subject to and in accordance with all the provisions of the laws of the State of Texas and all amendments thereto, and the said corporation hereby specially agrees that any and all lawful process against it which may be served upon its said attorney in fact shall be deemed valid personal service upon said company and shall be of the same force and validity as if served upon said corporation, and this authority shall continue in full force as long as said corporation is authorized to do business in Texas and for a period of four years from and after the date said corporation shall have surrendered its charter,"

is such language in said power of attorney as compels the court to the conclusion that said corporation voluntarily waived its privilege to be sued in the district of its domicile, and consented voluntarily that it might be sued in Texas by petitioner on the cause of action asserted by petitioner and the process when issued and served on said agent would be valid.

(5) The Circuit Court of Appeals for the Fifth Circuit erred in affirming the judgment of the trial court and quash-

ing service of process and dismissing petitioner's case, because by appointing Travis B. Moursund as its state agent for service of process in all cases then pending and there afterwards filed, respondent voluntarily waived its privilege to be sued in the district of its residence, and voluntarily consented that all process in all cases would be valid.

(6) The Circuit Court of Appeals for the Fifth Circuit erred in affirming the judgment of the trial court quashing process and dismissing petitioner's cause, by following a line of cases construing entirely different statutes from that of Texas, as well as powers of attorney with entirely different provisions in them from the one in the instant case.

(7) The Circuit Court of Appeals for the Fifth Circuit erred in affirming the judgment of the trial court and dismissing petitioner's case, by overlooking the proposition that the trial court as such, by reason of diversity of citizenship and the amount in controversy, had jurisdiction under the holding of the case of *Neibro Co.* v. *Bethlehem Shipbuilding Corporation*, 60 S. Ct. Rep. 153.

(8) The Circuit Court of Appeals for the Fifth Circuit erred in affirming the judgment of the trial court dismissing petitioner's case and by holding in effect that respondent's privilege to be sued in the District of its residence is not a personal privilege and cannot be and has not been waived by the appointment of Travis B. Moursund as its agent for service as to causes of action arising out of Texas.

(9) The Circuit Court of Appeals for the Fifth Circuit erred in holding in effect that respondent is not bound by its consent to be sued in Texas under the terms of the power of attorney given Travis B. Moursund as its agent for service in Texas, and under the provisions of Article 2031a, Re-

vised Civil Statutes of Texas, even though compliance with said statute by respondent, and the execution of said power of attorney were voluntary acts of respondent.

V.

ARGUMENT.

Summary of Argument.

POINT ONE.

Where there is diversity of citizenship and the amount involved exceeds the sum of $3,000.00, as in this case, the Federal District Court had potential jurisdiction.

Petitioner's Statement Under Point of Law No. One.

It is undisputed in the record that the petitioner at all times, involved herein, was and still is a citizen of Hidalgo County, Texas, in the Southern District of Texas and in the Brownsville Division thereof.

It is undisputed in the record that the respondent is a New York corporation, both from the pleadings of the petitioner in his original petition (R. 16-17) and his first amended original petition (R. 66), and also from the admission in respondent's original motion to dismiss, reading:

> "Defendant admits that it is a private corporation organized and existing under the laws of the State of New York; that it was organized about August, 1925."

As heretofore pointed out in the foregoing petition, the amount of money involved is far in excess of $3,000.00.

In *Neibro Company* v. *Bethelehem Building Corporation, Ltd.*, U. S. Sup. Ct., 84 L. Ed. 123, 60 S. Ct. 153, 308 U. S. 165, this Honorable Court held that where there was diversity of citizenship and the amount involved exceeds the sum of $3,000.00 that the Federal Court had potential juris-

diction. Therefore, the United States District Court, Southern District of Texas, Brownsville Division, had jurisdiction in this case, and the Circuit Court of Appeals for the Fifth Circuit erred in affirming the judgment of the trial court dismissing petitioner's case.

POINT TWO.

Under Article 2031a, Revised Civil Statutes of Texas, 1925, and under the provisions of the power of attorney executed by respondent designating Travis B. Moursund, its Texas agent for service of process, respondent voluntarily consented that the Texas courts, both State and Federal, might exercise jurisdiction over the cause of action sued upon by petitioner, and respondent waived any right or privilege to be sued elsewhere, and consented that service of process in this case on respondent might be had by serving the same on Travis B. Moursund, its agent for said purpose.

Petitioner's Statement Under Point of Law No. Two.

Petitioner has set out Article 2031a, Revised Civil Statutes of Texas, 1925 Revision, in the appendix to this brief, to which reference is here made.

The pertinent provisions of Article 2031a of the Revised Statutes of Texas, 1925 Revision, that provide as conditions precedent what a foreign corporation shall do before obtaining a permit to do business in Texas are:

> "Each" (meaning foreign corporations) "shall file in the office of the Secretary of State a power of attorney designating some individual who is a resident of this State, as its service agent on whom process may be served IN ALL SUITS, PROCEEDINGS AND CAUSES OF ACTION PENDING OR HEREAFTER FILED IN THIS STATE, IN WHICH SAID CORPORATION IS A PARTY OR IS TO BE MADE A PARTY, and SAID POWER OF ATTORNEY SHALL BE IN EFFECT so long as said corporation is author-

> ized to do business in Texas, AND FOR A PERIOD OF FOUR YEARS FROM AND AFTER THE DATE ANY SUCH FOREIGN CORPORATION SHALL HAVE SURRENDERED ITS CHARTER OR CEASED TO DO BUSINESS IN TEXAS. * * * The power of attorney required by the Act shall, in addition to stating the name and address of the agent, also stipulate that said agent is appointed as the corporation's service agent in Texas, and SAID FOREIGN CORPORATION CONSENTS TO THE SERVICE OF PROCESS UPON SAID AGENT, and that he shall be deemed as the service agent of said corporation for all intents and purposes as contemplated by the statutes, * * * and filed with the Secretary of State; and further providing, in the event of revocation * * *, said foreign corporation shall immediately substitute the name of some other individual by a similar power of attorney * * *, so that at all times an agent shall be available upon whom service of process may be had." (Caps ours.)

Pursuant to the provisions of said statute, respondent voluntarily complied with the same by executing a power of attorney appointing Travis B. Moursund its agent for service. The full contents of said power of attorney are found in the transcript at pp. 120-123, which power of attorney provided, among other things, as follows:

> "Know All Men by These Presents, that Richman & Samuels, Inc., a corporation duly chartered as such under the laws of the State of New York, does hereby make, constitute and appoint Travis B. Moursund, Gunter Building, San Antonio, Texas, a resident citizen of Texas, its true and lawful attorney in fact for it in the State of Texas, upon whom ALL PROCESS OF LAW against said corporation IN ANY ACTION OR LEGAL PROCEEDING may be served subject to and in accordance with all the provisions of the laws of the State of Texas and all amendments thereto. And the said corporation hereby specially agreed that any and

all lawful process against it which may be served upon its said attorney in fact, SHALL BE DEEMED VALID PERSONAL SERVICE UPON SAID COMPANY,—AND SHALL BE OF THE SAME FORCE AND VALIDITY AS IF SERVED UPON SAID CORPORATION, and this authority shall continue in full force as long as said corporation is authorized to do business in Texas, AND FOR A PERIOD OF FOUR YEARS from and after the date said corporation shall have surrendered its charter or shall have ceased to do business in Texas, duly passed on the 30th day of July, 1934," etc., signed Mayer Samuels, Vice-President, with corporate seal affixed, and properly acknowledged—(Caps ours) (R. 120-123).

Respondent surrendered its permit to do business in Texas on or about January 19, 1938 and ceased to do business in Texas, and notified Travis B. Moursund in writing of respondent's revocation of his agency for service in Texas, though no such revocation was ever filed with the Secretary of State, and Petitioner had no knowledge of such revocation until after this suit was filed (R. 126-127). The respondent never appointed any other agent for service after the revocation of its power of attorney to Travis B. Moursund. (Testimony of Mr. Clark, Secretary of State, R. 110-111). Petitioner filed this suit in the District Court of Hidalgo County, Texas on or about April 9, 1938, and citation was issued out of the District Court of Hidalgo County about April 9, 1938, and served by the proper officer in Bexar County, to whom it was directed on Richman & Samuels, Inc., by delivering the same to Travis B. Moursund, its agent. (R. 39, 61 & 62). The suit was removed to the District Court of the United States, for the Southern District of Texas, Brownsville Division, on respondent's petition for removal, proper notice and bond and order of the court made May 30, 1938 (R. 39-40). It is uncontroverted in the pleadings of both parties that petitioner has

been a citizen of the State of Texas, residing in Hidalgo County, ever since sometime prior to 1921, as well as by the evidence. On June 5, 1938, respondent filed its motion to dismiss for lack of jurisdiction over the person and subject matter, improper venue, insufficiency of process and service. (R. 102-103). On October 18, 1939, the trial court filed his memorandum of opinion, sustaining respondent's motion to dismiss, with directions for order accordingly. (R. 278). On October 31, 1939, the order of the trial court was entered, sustaining respondent's motion to quash and dismissing plaintiff's case (R. 290).

On appeal to the Circuit Court of Appeals for the Fifth Circuit, that Court on April 1, 1941, affirmed the judgment of the trial court (118 F. (2d) 1011), and on May 10, 1941, overruled petitioner's motion for rehearing (R. 412), and construed the Texas statute to apply "only to causes of action arising within the State of Texas", without regard for the language used by respondent in said power of attorney, and without regard for the voluntary consent of respondent to be sued in Texas Courts, both State and Federal, on all causes of action "then pending or thereafter to be filed."

Argument and Authorities Under Point of Law No. 2.

Respondent, by appointing Travis B. Moursund its agent in the manner required by the statute, under the provisions of said statute and the language used in said power of attorney, submitted itself to the jurisdiction of the Texas courts, both State and Federal, and consented that service of process may be had upon its agent until it surrendered its permit, and for four years thereafterwards.

In the case of *Neibro Company* v. *Bethlehem Shipbuilding Corporation, Ltd.*, U. S. Supreme Court, 84 L. Ed. 123, 60 S. Ct. 153, 308 U. S. 165, this Court held that the designation of an agent for service, by a foreign corporation, such

as we have in this case, such foreign corporation thereby surrenders and submits itself to the jurisdiction of the courts of that State where it obtains its permit, and waives its plea of privilege to be elsewhere sued, and consents to be sued in the courts of such State, both State and Federal.

In passing upon the question, Mr. Justice Frankfurter says, in part:

> "The jurisdiction of the federal courts—their power to adjudicate—is a grant of authority to them by Congress and thus beyond the scope of litigants to confer. But the locality of a lawsuit—the place where judicial authority may be exercised—though defined by legislation relates to the convenience of litigants and as such is subject to their disposition. This basic difference between the court's power and the litigant's convenience is historic in the federal courts. After a period of confusing deviation it was firmly re-established in General Invest. Co. *v.* Lake Shore & M. S. R. Co., 260 U. S. 261, 67 L. Ed. 244, 43 S. Ct. 106, and Lee *v.* Chesapeake & O. R. Co., 260 U. S. 653, 67 L. Ed. 443, 43 S. Ct. 230, over-ruling Ex parte Wisner, 203 U. S. 449, 51 L. Ed. 264, 27 S. Ct. 150, and qualifying Re Moore, 209 U. S. 490, 52 L. Ed. 904, 28 S. Ct. 585, 706 Ann. Cas. 1164. All the parties may be nonresidents of the district where suit is brought. Lee *v.* Chesapeake & O. R. Co. supra. Section 51 'merely accords to the defendant a personal privilege respecting the venue, or place of suit, which he may assert, or may waive, at his election.' Commercial Casualty Ins. Co. *v.* Consolidated Stone Co., 278 U. S. 177, 179, 73 L. Ed. 252, 254, 49 S. Ct. 98.
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> "Being a privilege, it may be lost. It may be lost by failure to assert it seasonably, by formal submission in a cause, or by submission through conduct. Commercial Casualty Ins. Co. *v.* Consolidated Stone Co., supra. Whether such surrender of a personal immunity be conceived negatively as a waiver or positively as a consent to be sued, is merely an expression of literary preference. The essence of the matter is that

courts affix to conduct consequences as to place of suit consistent with the policy behind Sec. 51, which is 'to save defendants from inconveniences to which they might be subjected if they could be compelled to answer in any district, or wherever found.' General Invest. Co. *v.* Lake Shore & M. S. R. Co., supra (260 U. S. at 275, 67 L. Ed. 254, 43 S. Ct. 106).

* * * * * * *

"In conformity with what is now Sec. 210 of the General Corporation Law of New York, Bethlehem designated 'William J. Brown as the person upon whom a summons may be served within the State of New York.' The scope and meaning of such a designation as part of the bargain by which Bethlehem enjoys the business freedom of the State of New York, have been authoritatively determined by the Court of Appeals, speaking through Judge Cardozo: 'The stipulation is, therefore, a true contract. The person designated is a true agent. The consent that he shall represent the corporation is a real consent. He is made the person Upon Whom Process Against the Corporation May Be Served. * * * The contract deals with jurisdiction of the person. It does not enlarge or diminish jurisdiction of the subject-matter. It means that whenever jurisdiction of the subject-matter is present, service on the agent shall give jurisdiction of the person.' Bagdon *v.* Philadelphia & R. Coal & I. Co., 217 N. Y. 432, 436, 437, 111 N.E. LRA 1916F, 407, Ann. Cas. 1918A, 389. A statute calling for such a designation is constitutional, and the designation of the agent 'a voluntary act.' Pennsylvania F. Ins. Co. *v.* Gold Issue Min. & Mill. Co., 243 U. S. 93, 61 L. Ed. 610, 37 S. Ct. 344.

"In finding an actual consent by Bethlehem to be sued in the courts of New York, federal as well as state, we are not subjecting federal procedure to the requirements of New York law. We are recognizing that 'state legislation and consent of parties may bring about a state of facts which will authorize the courts

> of the United States to take cognizance of a case.' Ex parte Schollenberger, supra (96 U. S. at 377, 24 L. Ed. 854). The judgment below is reversed."

It is submitted, in the light of the above decision, that Respondent, by voluntarily complying with the Texas statute and designating Travis B. Moursund as its agent for service in Texas, waived its privilege to be sued in the district of its domicile, and consented to be sued in the courts of Texas, both State and Federal.

In Restatement of the Law of Conflict of Laws, "Jurisdiction of Courts," Sec. 90, we find the rule stated:

> "A state can exercise, through its courts, jurisdiction over a foreign corporation in so far as the corporation has consented to the exercise of jurisdiction, whether or not the corporation is doing business within the State, and whether or not the cause of action arose out of business done within the State."

Clearly, by voluntarily complying with the Texas statute and by the language used in designating Travis B. Moursund as its Texas agent for service, respondent submitted to the jurisdiction of Texas courts, both State and Federal, and consented to the exercise of such jurisdiction, regardless of whether or not the cause of action arose out of business done within the State of Texas.

With reference to the appointment of an agent for service of process, Sec. 91, Restatement of the Law of Conflict of Laws, states the rule to be:

> "A state can exercise, through its courts, jurisdiction over a foreign corporation which has appointed an agent or a public official in the State to accept service of process in actions brought against the corporation in that State, as to all causes of action to which the authority of the agent or public official to accept service extends. The jurisdiction here exercised is based upon consent. The corporation is bound by its

> consent whether it is doing business in the State at the time the action is brought, or has ceased to do business in the State, or has never done business in the State."

It appears from the above quoted rule that the authority of the agent to accept service of process extends to all causes of action, without limitations, unless such limitations appear either in the statute or in the power of attorney. This is said to be the rule in Subd. c, Sec. 91, Restatement of the Law of Conflict of Laws, reading as follows:

> "If a corporation has appointed an agent or a public official in a State with authority to accept service of process in actions brought against the corporation in that State, the extent of that authority is a question of interpretation of the instrument in which the consent is expressed, and of the statute, if any, in pursuance of which the consent was given. The authority may be interpreted to extend to all causes of action, no matter where arising, brought against the corporation in the State, or it may be limited to causes of action arising within the State; it may be revocable at any time, or it may be irrevocable as to causes of action arising within the State prior to an attempt to revoke it."

A careful analysis of the Texas statute (Art. 2031a, R. C. S. of Tex., 1925 Rev.), together with a careful analysis of the power of an attorney executed by respondent designating Travis B. Moursund its Texas agent for service of process, fails to disclose any limitations or restrictions as to where the cause of action arose, but, on the contrary, applies to all causes of action, "then pending or thereafterwards to be filed." Applying the above quoted rule to both the statute and the power of attorney, we find that they are susceptible of only one interpretation; and the authority of the said Travis B. Moursund to accept service of process on behalf of respondent extended to all causes of

action, regardless of where they arose, and was and is not limited to causes of action arising within the State.

Respondent cannot relieve itself of the jurisdiction of the Texas courts, both State and Federal, by surrendering its permit and ceasing to do business in the State of Texas, as to causes of action arising out of business already done, especially as to causes of action arising out of business done with a citizen of Texas. The rule is stated in Subd. a, Sec. 93, Restatement of the Law of Conflict of Laws, as follows:

> "Having once subjected itself to the jurisdiction of the State by doing business, it cannot by ceasing to do business within the State, deprive the State of jurisdiction as to causes of action arising out of business already done."

Since the decision of this Court in the *Neibro* case was handed down, the opinion was followed by this Court in the case of *Oklahoma Packing Co.* v. *Oklahoma Gas Electric Co.*, 60 S. Ct. Rep. 215; and the lower courts, both trial and appellate, have had occasion to pass on the question decided by Mr. Justice Frankfurter, and his opinion has been approved in the following cases, among others: *Associated Broadcasters* v. *Federal Commission*, 108 F. (2d) 737, 739; *Hinchcliffe Motors, Inc.*, v. *Willys Overland Motors, Inc.*, 30 Fed. Supp. 580, 583; *International Union* v. *Tennessee Copper Co.*, 31 Fed. Supp. 1015; *Fort Wayne Corrugated Paper Co.* v. *Anchor Hocking Glass Corp.*, 31 Fed. Supp. 403; *Detachable Bit Co.* v. *Timken Roller Bearing Co.*, 31 Fed. Supp. 632, 633; *Kirkes* v. *Askew*, 32 Fed. Supp. 802; *Dehse* v. *Hillman Investment Company*, 110 F. (2d) 456; *Ward* v. *Studebaker Sales Corporation of America*, 113 F. (2d) 557; *Canright* v. *General Finance Corporation*, 33 Fed. Supp. 241; *International Union of Mine, Mill and Smelter Workers* v. *Tennessee Copper Company*, 31

Fed. Supp. 1015; *Williams* v. *James*, 34 Fed. Supp. 63 (a very interesting case); *Zwerling* v. *New York & Cuba Mail & S. S. Co.*, 33 Fed. Supp. 721.

We, therefore, submit that under the rules announced by Mr. Justice Frankfurter, the respondent corporation has consented to be sued in the State of Texas, and that the process is valid, and it has waived its privilege, if any, to be sued elsewhere, and the Federal court had jurisdiction over the subject-matter, and process was served on the respondent, over the person of respondent, and the Circuit Court of Appeals for the Fifth Circuit erred in sustaining the judgment of the trial court in quashing the process and in dismissing petitioner's case.

Point of Law No. 3.

Petitioner's contracts with respondent were made in Texas and he performed all his services under such contracts in Texas, and respondent's agents solicited petitioner's business in Texas, therefore, petitioner's cause of action, as a matter of law, arose in Texas.

Statement.

As previously pointed out, it is undisputed in the record the petitioner's contracts with respondent were all made in Texas, and he performed all his services under said contracts in Texas, and respondent's agents solicited petitioner's business in Texas, all of which occurred in the Southern District of Texas, Brownsville Division.

Argument and Authorities.

Article 1995, Subd. 27, Revised Civil Statutes of Texas, 1925 Revision, reads:

> "27. Foreign corporations.—Foreign corporations, private or public, joint stock companies or associations,

not incorporated by the laws of this State, and doing business within this State, may be sued in any county where the cause of action or a part thereof accrued, or in any county where such company may have an agency or representative, or in the county in which the principal office of such company may be situated; or, when the defendant corporation has no agent or representative in this State, then in the county where the plaintiffs or either of them, reside."

In passing upon this question, the courts of Texas hold that under the state of facts above recited, the cause of action, as a matter of law, arises in Texas, and in the county where the contracts were made.

In *Stanolind Oil & Gas Co.* v. *Christian*, 64 S. W. (2d) 363, the court, in construing the Texas statute above quoted, says:

> "The requirement that 'part thereof' shall have arisen in the county where the suit is brought is met by proof that the contract was made in that county Early-Foster Co. *v.* A. P. Moore's Sons, 230 S. W. 787; Cuero Cotton Oil Co. *v.* Feeders Supply Co., 203 S. W. 79; Western Wool Commission Co. *v.* Hart, 20 S. W. 131."

In *Hoffer Oil Corp'n* v. *Brian*, 38 S. W. (2d) 596, the Texas court, in passing upon the rule under consideration here, says:

> "It has been held by our Supreme Court (Texas) that no distinction is made, in so far as venue is concerned, between domestic and foreign corporations. Pittsburgh Water Heater Co. of Texas *v.* Sullivan, 115 Tex. 417, 282 S. W. 576; Lakeside Irr. Co. *v.* Markham Irr. Co., 116 Tex. 65, 285 S. W. 593."

The case then holds that a suit on a contract was properly brought in the county where the contract was to be performed.

The trial court and the Circuit Court of Appeals for the Fifth Circuit held, in effect, that petitioner's cause of action arose where petitioner was to be paid for his services, without regard for the fact that his contracts were all made in Texas, his services under such contracts were all performed in Texas, and respondent's agents solicited petitioner's business in Texas. We contend that there is sufficient evidence in the record to establish the fact that petitioner was to be paid for his services and for his produce in Hidalgo County, Texas. The record discloses that he received his drawing account by checks from respondent in Hidalgo County, Texas (R. 168), and respondent was obligated to account to petitioner for produce handled on consignment by delivering an account of sales and remittance therefor to petitioner in Hidalgo County, Texas (R. 169). The record discloses that on one or two occasions petitioner received some compensation from respondent while in New York (R. 317). That fact seems to have led both the trial court and the Circuit Court of Appeals for the Fifth Circuit to the conclusion that petitioner's cause of action arose in New York; and such conclusion is, in view of the Texas statutes and Texas decisions, clearly erroneous.

Consequently, in view of the Texas venue statute above quoted, and the application of the same to a similar set of facts as those prevailing in petitioner's case, by the appellate courts of Texas, petitioner's cause of action, as a matter of law, arose in Texas, and his suit was properly brought in Hidalgo County, Texas, the county of his residence. Therefore, the decision of the trial court and the Circuit Court of Appeals for the Fifth Circuit, that petitioner's cause of action "arose beyond the boundaries of Texas," is clearly erroneous and contrary to the law.

Point of Law No. 4.

Article 2031a, Revised Civil Statutes of Texas, 1925 Revision, applies to causes of action arising out of business conducted by respondent in Texas or had in relation to corporate acts of respondent done in Texas, and is not limited "only to causes of action arising within the State of Texas."

Statement.

As heretofore pointed out, it is undisputed that petitioner is a resident citizen of Texas, that petitioner's contracts with respondent were made in Texas, that his services under such contracts were all performed in Texas, and respondent's agents solicited petitioner's business in Texas; all of which occurred in the Southern District of Texas and in the Brownsville Division thereof.

Argument and Authorities Under Point No. 4.

Both the pleadings and the evidence, without dispute, show conclusively that petitioner's cause of action grew out of contracts that petitioner made with respondent in Hidalgo County, Texas, and out of services performed by petitioner, in pursuance of such contracts; the services being performed in Hidalgo, Starr and Cameron Counties, Texas, in the Southern District of Texas, and in the Brownsville Division thereof.

Under petitioner's Second Point of Law, it is his contention that it is immaterial where his cause of action arose, although he contends under Point Three that his cause of action in fact did arise in Hidalgo County, Texas. We think the most that could be said with reference to this question, under the authorities, is that it is sufficient that the cause of action relate to, and grew out of, business relations had with the respondent in Texas, while it was engaged in business in Texas.

In construing a statute of Louisiana, somewhat similar to the Texas statute, this Court, in the case of *Louisville & N. R. Co.* v. *Chatters* and *Southern Ry. Co. et al.* v. *Chatters*, 49 Sup. Ct. 329, speaking through Mr. Justice Stone, said:

> "Since the Southern was present and subject to the suit in Louisiana, we are concerned, not with the question whether the sale of the ticket was sufficient to bring it there, but only with the question whether, being there, its liability extended to all causes of action arising out of its corporate acts within the State, including this one. No case, either in the Louisiana courts or in this court, has held that it did not. Where jurisdiction has been denied, the cause of action not only arose outside the State, but it was not shown to have arisen out of any business conducted by the corporation within it or to have had any relation to any corporate act there. Cf. Old Wayne Mutual Life Ass'n *v.* McDonough, supra (204 U. S. 8, 27 S. Ct. 236, 51 L. Ed. 345); Simon *v.* Southern Ry. Co., supra (236 U. S. 115, 35 S. Ct. 255, 59 L. Ed. 492); Mitchell Furniture Co. *v.* Selden Breck Const. Co., supra (257 U. S. 213, 42 S. Ct. 84, 66 L. Ed. 201). In such a case, whether the jurisdiction invoked be deemed to depend upon the presence of the corporation within the State through the doing of business there, or on its consent by the designation of an agent, the implication is that the liability to suit does not extend to causes of action which have nothing to do with any act of the corporation within the State. Mitchell Furniture Co. *v.* Selden Breck Constr. Co., at page 216 of 257 U. S. (42 S. Ct. 84). But where the cause of action does arise out of a corporate act within the jurisdiction, the presumption would seem necessarily to be the other way."

In the case of *Wefel* v. *W. P. Brown & Son Lumber Co.*, 58 F. (2d) 667, Judge Ervin recently approved of Justice Stone's holding as to the sufficiency of the facts relating to where the cause of action arose, and also made the following interesting statement with reference to consent

when the suit is brought in the Federal court (near the bottom of p. 669):

> "If the federal court could infer from a compliance with its terms by a non-resident corporation a consent to be sued in a federal court of that State, why is not the same consent inferred to service of process in Alabama in the same manner as by the Alabama courts?
>
> "Undoubtedly, that portion of the Alabama statutes requiring the appointment of the agent and its consent for service on him in Alabama gives the right to the federal court to serve its process on such agent, and so bring the corporation into court, to the same extent as it does on its State courts. Why, then should the federal court deny, limit, or give any less efficiency to the portion of the statute as to the method of service?
>
> "If the defendant has by compliance with the statute consented to one part, it has consented to all. If the defendant has consented to the place of suit, it has also consented to the method of service. If the consent as to one applies in the federal court, then also the consent as to the other applies."

We submit, therefore, that when respondent voluntarily complied with Article 2031a, Revised Civil Statutes of Texas, 1925 Revision, and voluntarily executed the power of attorney designating Travis B. Moursund its Texas agent for service of process, respondent voluntarily consented that the Texas courts, both State and Federal, might exercise jurisdiction over any cause of action of petitioner arising out of business conducted by respondent or had in relation to corporate acts of respondent done in Texas; and the Circuit Court of Appeals for the Fifth Circuit erred in holding that said statute applies "only to causes of action arising within the State of Texas."

We now direct the Court's attention to the Perishable Agricultural Commodities Act, Sec. 499b of Title 7, U. S. C. A., and the case of *Iwata* v. *Western Fruit Growers,*

90 F. (2d) 575, which, as we construe the case, clearly holds that under Subdivision (4) of Section 499b, as to carload lots of produce that were consigned by petitioner to the respondent corporation in New York, the respondent in fact was required to truly account to the petitioner promptly in respect of the transactions, and that would mean that account sales on produce consigned by petitioner to respondent, together with remittance to cover the same, would be made by respondent to petitioner in Hidalgo County, Texas; and if that be true, the respondent was obligated to pay petitioner for his produce in Weslaco, Hidalgo County, Texas.

An examination of the record in this case will lead this Court to the inescapable conclusion that petitioner's cause of action relates to and grew out of business relations had with the respondent in Texas, while it was engaged in business in Texas. Consequently, in view of the above quoted decisions, considered in connection with the Texas statute under consideration (Article 2031a, Revised Civil Statutes, 1925 Revision), said statute certainly applies to causes of action arising out of business conducted by respondent, or had in relation to corporate acts of respondent done in Texas, and is not limited "only to causes of action arising within the State of Texas," and the Circuit Court of Appeals for the Fifth Circuit erred in so limiting and construing said statute.

Point of Law No. Five.

Petitioner's causes of action alleged in his pleadings are not barred under the Statute of Limitations of the State of Texas; but are barred under the statute and decisions of the State of New York.

Statement.

As heretofore pointed out, petitioner filed his suit in the 93rd Judicial District Court of Hidalgo County, Texas,

within a few months after he discovered the fraud that respondent had perpetrated upon him.

Argument and Authorities.

Article 5526, Subd. 4, Revised Civil Statutes of Texas, 1925 Revision, provides:

> "There shall be commenced and prosecuted within two years after the cause of action shall have accrued, and not afterwards, all actions of suits in court of the following description: Actions for debt where the indebtedness is not evidenced by a contract in writing."

28 Texas Jurisprudence, Sec. 44, applies the above statute to actions for fraud by use of the following language:

> "An action for damages for fraud is governed by the 2-year statute (Rev. Civ. St., Art. 5526, Subd. 4)."

The tolling of the Statute of Limitation in Texas is suspended until the complainant has discovered the fraud, or has learned facts sufficient to put him upon inquiry. The rule is stated in 28 Texas Jurisprudence, Sec. 68, in the following language:

> "It has been decided many times, and the rule is therefore well settled, that in suit for relief against fraud and deceit, the statute of limitations does not begin to run until the complainant has discovered the fraud, or has learned facts sufficient to put a person of ordinary prudence on inquiry which, if pursued, would have led to discovery."—Citing numerous decisions in support of the rule by the Supreme Court of Texas, including *Port Arthur Rice Milling Co.* v. *Beaumont Rice Co.*, 105 Tex. 514, 143 S. W. 926; *Oldham* v. *Maderis*, 90 Tex. 506, 39 S. W. 919; and *Bass* v. *James*, 83 Tex. 110, 18 S. W. 336.

It, therefore, follows as a matter of law that petitioner's cause of action is not barred by the statute of limitations in the courts of Texas.

Substantially all of petitioner's cause of action was barred by the statute of limitations of the State of New York at the time petitioner discovered the fraud that respondent had perpetrated upon him; and all of petitioner's cause of action is now barred by the statute of limitations of New York State and decisions of the New York State courts.

Carr v. *Thompson*, 87 N. Y. 160;
Middleton v. *Twomby*, 125 N. Y. 520;
Brick v. *Cohn*, 276 N. Y. 259.

Therefore, should petitioner be required to pursue his remedy in the courts of the State of New York, he would be forever barred from recovering the large sums of money alleged to be due him by respondent, and the ends of justice would be defeated.

We, therefore, submit, as a matter of law, justice, and good conscience that petitioner should be permitted to pursue his remedy in the forum of Texas courts.

Point of Law No. Six.

The act of respondent, on the 25th day of January, 1938, in attempting to revoke the power of attorney of Travis B. Moursund as its agent for service in Texas, without immediately appointing a new agent for that purpose and without filing notice of such revocation in the office of the Secretary of State of the State of Texas, was ineffective for the purpose of defeating the validity of the process served upon Travis B. Moursund in petitioner's case, as said power of attorney was contractual in its nature and coupled with an interest and irrevocable under Article 2031a, Revised Civil Statutes of Texas, 1925 revision, until four years after the 19th day of January, 1938, that being the date that respondent surrendered its permit to do business in Texas and ceased to do business in Texas.

Petitioner's Statement Under His Sixth Point of Law.

Petitioner will adopt his statement under his second point of law, as contained in this brief, as his statement under this, his sixth point of law, and will add thereto the following:

On the 25th day of January, 1938, the defendant, in writing, notified its agent, Travis B. Moursund, of its withdrawal from Texas, and their revocation of his appointment as the statutory agent in Texas for service, of the respondent, though no such revocation of notice thereof was filed with the Secretary of State of the State of Texas, and the plaintiff, T. E. Stephens, had no knowledge of such revocation until after this suit was filed (R. 127).

As showing that no other agent has ever yet been appointed by the respondent in place of Travis B. Moursund after it attempted to revoke his authority as respondent's statutory agent for service in Texas, the petitioner took the deposition of the then Secretary of State, Edward E. Clark, who testified that he was appointed Secretary of State November 16, 1936, and the appointment became effective January 19, 1937, and he was still acting secretary when his deposition in this case was taken; that the power of attorney appointing Travis B. Moursund as agent for service in Texas, for respondent, was filed in his office on July 30, 1934; that no other person than Travis B. Moursund was ever appointed agent in Texas for Richman & Samuels, Inc. (R. 111). He further testified that there is no record in his office to show that any other person, other than Travis B. Moursund, was ever appointed as agent in Texas to represent the defendant (R. 111). And continuing, that there is no record in his office of any instrument revoking the power of attorney designating Travis B. Moursund as agent for service in Texas for Richman & Samuels, Inc. (R. 110-111). This deposition was taken on the 6th day of

December, 1938. (See certificate of the notary taking Clark's deposition, R. 112).

Argument and Authorities.

Petitioner contends under his Sixth point of law that respondent's attempt at revocation of its power of attorney for Travis B. Moursund to represent it in this State for service purposes, was ineffectual to escape from the jurisdiction of the courts of Texas as to any action brought, especially by a citizen of Texas, or one arising out of the contract made while the corporation is engaged in business in Texas.

Discussing the question of the revocation of the authority of a State agent for service by a foreign corporation, we quote the following from 21 R. C. L., Sec. 94, p. 1344:

> "It seems to be the rule in some jurisdictions that such revocation of authority is effectual although the liability of the corporation was incurred while it was doing business in the State. But the prevailing rule is that a corporation cannot by revoking the authority of the agent and withdrawing from the State escape from the jurisdiction of the courts of the State as to an action brought by a citizen of the State or one arising from a contract made while the corporation is engaged in business in the State; and it is immaterial whether the appointee for service is a state officer, or a private person."

Then again, in 12 R. C. L., Sec. 89, p. 113, the rule on the point announced as follows by the text:

> "* * * It is generally held that a foreign corporation, which has to be admitted to do business within a State upon the condition that it execute a power of attorney for service of process to a general agent or State office, CANNOT, after having designated some person for service of process and carried on business within the State, ESCAPE FROM THE JURISDICTION OF

THE COURTS OF THE STATE OVER ACTIONS BROUGHT BY RESIDENTS THEREOF, with whom it has contracted under the permission to do business therein, by revoking the power of attorney for service of process and ceasing to do business within the State * * *'' (Caps ours).

The rule, as stated in the text above quoted, is supported by a long list of authorities.

Turning, now, to *Corpus Juris*, Vol. 14A, Sec. 4140, p. 1415, there the text states the rule under consideration, in these words:

"Service cannot be made on a person appointed to receive service where the appointment has been revoked, or where there has been a subsequent formal appointment of another person as sole agent to receive service. On the other hand, except in some jurisdictions, service on a person who has been appointed a statutory agent to receive service of process and whose appointment as such has not been revoked, so far as the public records disclose, either expressly or by the appointment of another agent, is sufficient, even though he is no longer in the actual service of employment of the company. A revocation of the power of an agent on the eve of institution of suit against the corporation on a claim of which it has notice, savors of bad faith, and will not be permitted to frustrate a suit commenced by service on such agent."

In the case of *Meixell* v. *American Motor Sales Co.*, 103 N. E. 1071, the court, in passing on the question before us said:

"The question presented by the plea is: Can a foreign corporation which has complied with the statutes of this State, under Sections 4086, 4089, Burns 1907, on coming into this State to transact business, upon discontinuing that business and removing all its property from the State, and having no agency, agent or repre-

> sentative of any kind, or property, moneys, or credits in the State, revoke the agency created on its entry into the State, by filing such attempted revocation in the office of the Secretary of State before suit is brought, when the agent has removed from the State not on any business of the corporation, he being at the time neither an officer nor stockholder in the corporation, and having no connection therewith, where also there has been no attempt at substitutions of another agent to receive service, where the cause of action arises out of a contract made in this state, with the corporation whilst it was engaged in the exercise of its franchises and the transaction of business in this State, under its agreement with the State, so as to defeat jurisdiction of such personal action?"

After stating the above question, the court proceeded to an analysis of the State statute under consideration, and concludes by saying:

> "It is scarcely necessary to point out that the permission within constitutional limits to exercise its franchise is a sufficient contractual consideration for the agreement in regard to service on it."

And, continuing, it in effect holds that such statutes are enacted for the benefit of citizens or residents who have business in the State with such a corporation and enter into contracts with it, and concludes that such a power is coupled with an interest, and is irrevocable so long as an interest in the subject-matter of that power continues. The court concludes with these words:

> "Taking the whole scope and purpose of the Act, its spirit and intent, the statutory requirement is a continuing one, so long as a liability exists arising out of business transactions in this State, for if this be not so, it can have no object, a conclusion which will not be attributed to the legislative branch."

In the case of *King* v. *American Tank & Equipment Corp.*, 144 So. 283, the court had under consideration there the

construction of a Louisiana statute somewhat similar to the Texas statute. Here is what the court said, in passing upon the question of revocation without appointing another agent:

> "The language of the Act is plain and needs no interpretation. As long as any outstanding liability remains against the corporation, service upon the agent appointed by said corporation upon whom service of process is to be made, is a legal and valid service, and as long as that liability remains outstanding a revocation of the agent's authority is without avail. There is nothing in the Act to limit to citizens of this State only. The only limitation is that the liability must have grown out of or connected with the business done by said corporation in this State."

The court then quotes with approval the following from the decision in *Western Grocery Co.* v. *New York Over Sea Co.*, 296 Fed. 269.

> "It is at once apparent that, to permit a corporation to accept the benefits of his state, and, after it had entered into contracts, to evade jurisdiction by withdrawing its agent, would be in the highest degree unequitable and unjust.

And then cites with approval the following quotation from *Davis* v. *Kansas & Texas Coal Co.*, 129 Fed. 149:

> "A state has the power, if she allows a corporation to enter her confines, to determine the condition on which the entry shall be made and the right to enforce any condition so imposed. The power to exclude embraces the power to regulate, and the power to enact and enforce such regulations.
>
> "When a foreign corporation undertakes to transact business in a State other than that in which it is incorporated, it submits itself to the authority of the courts of such other State and is bound by the statutory pro-

visions respecting the method of such courts obtaining jurisdiction over it. United Oil & Natural Gas Prod. Corp. *v.* United Carbon Corp., 171 La. 374, 131 So. 52."

Before concluding our reference to a few more cases, we desire to call the Court's attention to *Hunter* v. *Mutual Reserve Life Insurance Co.*, 31 Sup. Ct. Rep. 127, as showing that some courts view the question of revocation under consideration as being contractual, and the Supreme Court said:

> "It is conceded that, as a general rule, a principal has the right to revoke a power of attorney at any time, whether it is in terms irrevocable or not. But to this general rule there are well-established exceptions, as to where it is coupled with an interest, or where it is contractual in its nature, given for a consideration and for the protection of someone or some interest. In our opinion this power falls under this exception to the general rule. It was contractual in its nature, was given upon consideration that defendant should have the right to carry on its business in the State, and for the protection of those who should deal with the defendant."

The last quotation has been quoted with approval by many of the courts of this land.

In the case of *Kelly* v. *Johnson Nut Co.*, 38 F. (2d) 177, the question before the Court was one of service on a designated agent. The Code of Ohio provided for service on the Secretary of State if the Company did not have an agent, or in the event the agent's designated authority was revoked. Passing on the question, the Court used this language.

> "The precise question confronting us is whether, under the liberal construction in furtherance of the general purpose to which we think the statutes are entitled, the right to serve the corporation, by service

upon a designated agent, survives the revocation (for nonpayment of taxes) of authority to do business within the State, as to suits founded upon business transacted there before revocation and withdrawal.

"It seems manifest that if the statute expressly provides that the power of attorney shall be irrevocable, or validates service upon a State officer, as long as any liability of the company remains outstanding in such State, such provisions are valid and withdrawal from the State is ineffective to defeat such service."

Citing *Hunter* v. *Mutual Reserve Life Ins. Co.*, 218 U. S. 573, 591, 31 S. Ct. 127, 54 L. Ed. 1155, 30 L. R. A. (N. S.) 686; *Insurance Company* v. *Scott*, 48 S. E. 581; *Kraus* v. *American Tobacco Co.*, 283 Pa. 146, 129 A. 60; *Wilson* v. *Martin-Wilson Reserve Fund Life Ass'n.*, 119 Fed. 617.

And then continuing, the Court further said:

"The same principle has been applied where the statute provides for the appointment of an agent to receive service of process 'in any action' thereafter instituted."

Citing *Home Ben. Soc. of N. Y.* v. *Muehl*, 59 S. W. 520; *Commonwealth* v. *Provident Sav. Life Assur. Soc.*, 159 S. W. 698; *Chelais River Lbr. Co.* v. *Empire State Surety Co.*, 206 Fed. 559.

And further continuing, the Court said:

"In such a case the agency is said to be irrevocable as one coupled with an interest on behalf of resident creditors. Frazier *v.* Steel & Tube Co. of America, 132 S. E. 723, 45 A. L. R. 1442; McClamroch v. Southern Surety Co., 187 N. W. 41. Or, more properly, we think, the designation of an agent to receive service of process, as a condition precedent to doing business within the State, is regarded as a contract for the benefit of resident creditors, to submit to jurisdiction, which applies to all liabilities created within the State, and which, as to such liabilities, is irrevocable."

Other authorities holding that the appointment of a designated agent for service, as a condition precedent for a foreign corporation to obtain a permit to do business in a State, is, in a sense, a contract for the benefit of resident creditors as to all liabilities arising in such State, are: *Magoffin* v. *Mutual Reserve Fund Life Assn.*, 91 N. W. 1115; *Woodward* v. *Mutual Reserve Life Ins. Co.*, 71 N. E. 10; *Western Grocery Co.* v. *N. Y. Oversea Co., Inc.*, 296 Fed. 269, and *Davis* v. *Kansas & Tex. Coal Co.*, 129 Fed. 149.

Concluding in this *Kelly-Johnson* case, Judge Hilkenlooper says this, in construing the Act of the Legislature before him with reference to the revocation of the Power of attorney appointing an agent for service, of a foreign corporation:

> "This has a direct bearing upon the scope to be given to Section 179, for it is not conceivable that the Legislature intended that process might be served upon the foreign corporation after revocation of its right to do business in Ohio because of failure to appoint a new agent, but did not intend such survival in the event of a new agent, but did not intend such survival in the event of a revocation of the same authority for any other cause or upon voluntary withdrawal. By necessary implication, the intent would rather seem to be that authority of the agent to receive service of summons continued as long as there were unsatisfied liabilities incurred within the State before withdrawal and while the agent was available for this purpose; but if such agent died or removed from the State, whether before or after withdrawal of the corporation therefrom, the obligation to appoint a new agent was imposed upon such corporation, as to such liabilities, and on failure so to do, service might be made upon the Secretary of State." (Citing authorities.)
>
> "So construing the provisions of these sections, it follows that their terms constituted a contract by the

defendant below for the benefit of plaintiff, among others, which contract was read by implication into the contract between plaintiff and defendant. Having withdrawn from the State while the liability to plaintiff, which was incurred within the State before withdrawal, still remained unsatisfied, and service having been made upon the person designated by the defendant to receive such service, the court below erred in holding such service invalid, and the judgment is

"Reversed."

The above authorities construed statutes different from Article 2031a of Texas, but practically every statute prescribed in the appointment of a State agent for service as a condition precedent of a foreign corporation obtaining a permit to do business in that State, has a limitation of some character, some limiting the service as to causes of action arising in the State, others to demands unsatisfied arising out of business in the State; and the Courts have invariably viewed the matter, where the statute did not in its terms provide that the power of attorney be irrevocable, as one based either upon a contractual relation with creditors of the corporation doing business in the State where it obtained a permit, or as a power coupled with an interest. In most cases, it has been held that the power is irrevocable as long as demands are unsatisfied, that grew out of the business of the company after it obtained a permit to do business in the State, or that arose out of transactions of business had in the State.

Section 3 of said Article 2031a reads:

"In the event of the death, resignation or removal of said agent so appointed, or the revocation of said power of attorney by said corporation, said FOREIGN CORPORATION SHALL IMMEDIATELY substitute the name of some other individual by similar power of

attorney as is required by this Act, so that AT ALL TIMES an agent shall be available upon whom service of process may be had as provided herein." (Caps ours.)

The Texas statute goes further than any other similar statutes that have been considered by our courts. The only limitation in the Texas statute as to the power of attorney is a limitation in point of time. The power of attorney required by the Texas statute shall remain in full force and effect so long as said corporation is authorized to do business in Texas, and for a period of four years from and after the date any such foreign corporation shall have surrendered its charter or ceased to do business in Texas. Then, as a condition precedent to the right of the foreign corporation to revoke its power of attorney, our Texas statute has clearly expressed the intention of the Legislature by providing it shall not become effective unless the corporation immediately substitute some other person, "so that at all times an agent shall be available upon whom service of process may be had, as provided herein."

We, therefore, submit the proposition that, in view of the above authorities, and the language of the statute and the powers authorized by the power of attorney, the attempt of respondent to cancel the power and authority of its Texas agent was ineffectual to destroy the validity of the process served by petition upon said agent, when said attempted revocation was not filed for record with the Secretary of State and no other agent was named by respondent, and petitioner had no knowledge of such attempted revocation until long after his suit was filed.

Conclusion.

It is therefore respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers, by granting a writ of certiorari and thereafter reviewing and reversing said decision.

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